

## Message Text

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ORIGIN EA-09

INFO OCT-01 EUR-12 ISO-00 AID-05 SSO-00 NSCE-00 USIE-00

INRE-00 SP-02 EB-07 NSC-05 CIEP-01 TRSE-00 SS-15

STR-04 OMB-01 CEA-01 CIAE-00 DODE-00 PM-04 H-02

INR-07 L-03 NSAE-00 PA-01 PRS-01 IGA-02 ABF-01 FS-01

COME-00 FRB-03 XMB-02 OPIC-03 LAB-04 SIL-01 /098 R

DRAFTED BY EA/VLC:MHENDERSON/L/EA:PNORTON:JY

APPROVED BY EA:PCHABIB

AID/ASIA/DCS:TLEWIS

EA:RHILLER

AID/INDOCHINA RESIDUAL:NROSNER

AID/GC:HMORRIS

AID/ASIA:MADLER

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O R 171541Z MAR 76

FM SECSTATE WASHDC

TO AMEMBASSY VIENTIANE IMMEDIATE

INFO AMEMBASSY BANGKOK

AMEMBASSY CANBERRA

AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY TOKYO

CINCPAC

C O N F I D E N T I A L STATE 064550

FOR POLAD

E.O. 11652: GDS

TAGS: EAID, EFIN, LA

SUBJECT: FEOF: ISSUES CONCERNING TERMINATION

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REF: VIENTIANE 581 AND PREVIOUS

1. DEPARTMENT CONCURS WITH POINTS IN REFTELS REGARDING THE TERMINATION OF FEOF. SPECIFICALLY, AFTER CAREFUL STUDY DEPARTMENT AND AID AGREE THAT WE DO NOT HAVE LEGAL GROUNDS FOR ASSERTING A RIGHT TO THE KIP BALANCE IN THE FUND ATTRIBUTABLE TO U.S. CONTRIBUTIONS OVER THE YEARS. DEPARTMENT AND AID ALSO CONCUR IN REVERSION OF THE DOLLARS IN THE PROFIT AND LOSS ACCOUNT TO THE FEOF DOLLAR OPERATING FUND UPON DEPARTURE OF MANAGER HUNT ON THE UNDERSTANDING THAT ANY ADMINISTRATIVE COSTS INCURRED BY FEOF AFTER MARCH 31 MUST BE MET BY THE LAO GOVERNMENT. IN ADDRESSING THE ISSUE OF DISPOSITION OF THE KIP BALANCES ATTRIBUTABLE TO U.S. CONTRIBUTIONS, THE TACTICS TO BE EMPLOYED IN OUR DEALINGS WITH THE LAO GOVERNMENT ARE DISCUSSED BELOW.

2. LEGAL CONSIDERATIONS:

A. IT SEEMS CLEAR THAT PRIOR TO THE TERMINATION OF THE FUND, THE U.S. HAS NO RIGHT TO WITHDRAW COUNTERPART KIP GENERATED OVER THE YEARS BY OUR CONTRIBUTIONS. ARTICLE 13B(4) OF THE 1975 UNDERSTANDING (UNDERSTANDING CONCERNING THE FOREIGN EXCHANGE OPERATIONS FUND FOR LAOS) EXPRESSLY STATES THAT NO U.S. ORIGIN KIP PROCEEDS SHALL BE WITHDRAWN. INSOFAR AS THE CURRENT KIP BALANCE IS ATTRIBUTABLE TO FUNDS PROVIDED UNDER AGREEMENTS OF PREVIOUS YEARS (EXCEPT FOR 1972 AND 1973), IT SHOULD ALSO BE NOTED THAT THOSE AGREEMENTS HAD SIMILAR PROHIBITIONS ON WITHDRAWALS. IN THE CASE OF THE 1972 AND 1973 AGREEMENTS, THE U.S. APPEARS TO HAVE ALREADY WITHDRAWN ALL THE KIP PROCEEDS TO WHICH IT WAS ENTITLED.

B. ON TERMINATION OF THE FUND, BOTH THE 1975 UNDERSTANDING (PARA 16) AND THE CONFIDENTIAL LETTER (PARA XIX) PROVIDE THAT KIP BALANCES SHALL BE "DISPOSED OF" OR "USED" BY AGREEMENT AMONG THE CONTRIBUTING GOVERNMENTS. THE U.S. COULD, OF COURSE, REQUEST, REPEAT REQUEST THAT THE OTHER DONORS AGREE THAT ANY PART OF THE KIP BALANCES WHICH MIGHT BE SEGREGATED AS BEING OF U.S. ORIGIN BE RETURNED TO THE USG FOR ITS OWN PURPOSES (E.G. FOR USE FOR EMBASSY VIENTIANE'S LOCAL EXPENSES). HOWEVER, THERE

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IS NO BASIS FOR ARGUING THAT THE USG HAS AN AFFIRMATIVE RIGHT FOR SUCH A DISPOSITION OF THE FUNDS. IN VIEW OF EMBASSY'S CONVICTION THAT THE LAO WOULD NOT AGREE TO TURNING OVER THAT PART OF THE KIP BALANCE GENERATED BY U.S. CONTRIBUTION FOR OUR USE, DEPARTMENT AND AID ARE PREPARED TO ACCEPT THE DISPOSITION OF THE KIP BALANCE AS SUGGESTED REFTEL (PARA 3). DEPARTMENT AND AID TAKE THIS POSITION ONLY BECAUSE OF (1) OUR LACK OF LEGAL GROUNDS

FOR ASSERTING A RIGHT TO THE FUNDS, (2) THE KNOWLEDGE THAT THE FUNDS ARE COMPLETELY IN LAO GOVERNMENT CONTROL, AND BECAUSE (3) ANY ASSERTION OF A CLAIM TO THE FUNDS WOULD, AS EMBASSY INDICATES, ADD ANOTHER SERIOUS PROBLEM TO THOSE ALREADY TROUBLING US/LAO RELATIONS.

3. EMBASSY SHOULD DEFER RESPONSE TO THE LAO NOTE REQUESTING TURN-OVER OF THE KIP BALANCES TO THE LAO TREASURY AT LEAST UNTIL SOME OF THE OTHER DONORS HAVE RESPONDED. WE DO NOT WISH THE U.S. RESPONSE TO BE THE FIRST MADE.

EMBASSY MAY IN FACT WISH TO CONSIDER WITHHOLDING ANY RESPONSE TO THE LAO FOR A PERIOD OF TIME, IF YOU SEE SOME BENEFIT IN LINKING THIS TO RESOLUTION OF OUR REAL ESTATE, MIA, OR OTHER PROBLEMS WITH PDRL. WHATEVER TACTIC YOU CHOOSE, YOU SHOULD IN ANY EVENT MAKE CLEAR TO LAO THAT WE ARE ACCEDING TO LAO REQUEST AS PART OF OUR EFFORT TO HELP CREATE THE PROPER ATMOSPHERE FOR RESOLUTION OF THE SEVERAL MATTERS AT ISSUE BETWEEN US. KISSINGER

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